



David B. Cohen
Mayor

CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

Telephone
(617)-796-1120

Telefax
(617) 796-1142

E-mail
mkruse@ci.newton.ma.us

Public Hearing Date: September 27, 2004
Zoning and Planning Action Date: November 22, 2004
Board of Aldermen Action Date: December 6, 2004
90-Day Expiration Date: December 26, 2004

DATE: October 22, 2004

TO: Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris G. Alksnitis, Chief Zoning Code Official

SUBJECT: PETITION #264-04, ALD. JOHNSON, SANGIOLO, HESS-MAHAN, LINSKY recommending that Section 30-24(f), *Inclusionary Zoning*, as most recently amended by Ordinance X-48 on April 22, 2003, be further amended based on its first application to the Christian Science Church redevelopment at 391 Walnut Street.

CC: Mayor David B. Cohen
Edward Dailey, Chair, Inclusionary Zoning Task Force
Robert Engler, Chair, Newton Housing Partnership
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

RECOMMENDATION: *Adopt with additional refinements.*

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider its discussion at a subsequent Working Session.

I. BACKGROUND

On April 22, 2003, the Board of Aldermen (Board) approved significant revisions to the prior version of Section 30-24(f), *Inclusionary Zoning Ordinance*, with the adoption of Ordinance X-48. Subsequently, the Zoning and Planning Committee considered and determined that modifications to Section 30-24(f)(11) Hotels, were not needed.

After the adoption of Ordinance X-48, an application for the redevelopment of the Christian Science Church at 391 Walnut Street, Newtonville was filed with the Land Use Committee. The petition was for the conversion of the church to 9 residential units. While the proposed development, Petition #510-03(2), was reviewed and eventually approved by the Board, this project also served as the first “test case” for the new inclusionary zoning provisions. During the review process, it was found that a number of the provisions needed additional clarification, definition, and/or refinement. As a result, further modifications have been identified by the Inclusionary Zoning Task Force (Task Force), chaired by Ed Dailey, and are proposed as outlined herein.

The public hearing for this item commenced September 27, 2004 and was continued to October 25, 2004. Since the hearing date, the Planning Department has received comments from the Newton Housing Partnership, which was generally supportive of the changes. The Partnership did recommend selected changes in the language, as noted in Section III. Analysis, below.

II. “CLEAN-UP” ISSUES

Based on the practical application of the current *Inclusionary Zoning Ordinance*, and follow-up discussions among the Task Force members, certain “clean-up” issues were identified for further discussion and possible amendment to the ordinance, as follows:

- A. Change “statistical area” definition to accommodate anticipated changes by U.S. Department of Housing and Urban Development pertaining to the area, which includes Newton. See Sections 30-24(f)(1)a) and b)(ii) through (v).
- B. Add a provision clarifying that the determination of the median income level for purposes of determining eligibility is at the time of application for special permit. See Sections 30-24(f)(1)a) and b)(ii) through (v).
- C. Clarify language for off-site inclusionary units developed by a non-profit housing organization, such that temporary and final occupancy certificates for market units will be withheld if inclusionary units are not completed at the time occupancy certificates are sought for market units, and also require the number of market rate occupancy certificates to be withheld to be equal to the number of inclusionary units which have not been completed. See Section 30-24(f)(5).
- D. Include a provision to allow applicants to use a standard form marketing and resident selection plan for inclusionary units, which has been developed by the Planning and Development Department. This will save the applicant the time and cost of developing and implementing a unique plan, and helps to assure that the format of the plan is acceptable to the City. See Section 30-24(f)(8)b).
- E. Include a provision requiring applicants to select “Eligible Households” as follows:
 - 1. Inclusionary Rental Units -- from listing developed, maintained, and advertised by the Housing Authority.

2. Inclusionary For Sale Units -- from listing developed, maintained, and advertised by the Planning and Development Department.

Require, as part of this provision, that applicants pay reasonable costs of development, maintenance, and advertising of the above listings. See Sections 30-24(f)(8)c) and d)

- F. Include a provision that a non-profit housing development organization may seek public funding to offset some of its development costs for inclusionary units, subject to this ordinance, if at least 50% of the units are affordable to Eligible Households. See Section 30-24(f)(9).

The Task Force has developed suggested language changes to Section 30-24(f), which reflect the above recommended changes. (*See Attachment A: Proposed Amendments to Ordinance No. X-48 (Inclusionary Zoning)*)

III ANALYSIS

The Planning and Development Department and Newton Housing Partnership (Partnership) have reviewed the suggested changes and agree with the intent of the “clean up” items listed above. While many of the suggested language changes may be adopted as proposed, the Planning Department and Partnership have suggested certain further clarifications, as indicated below:

- Sections 30-24(f)(1)a) and b)(iii) through (v), [Definitions] – The proposed change of statistical area is appropriate since the U.S. Department of Housing and Urban Development has proposed moving Newton from the Boston Metropolitan Statistical Area (MSA) to a new MSA, which includes only Middlesex County. These changes would encompass any future changes, as well. (*Also see discussion of Section 30-24(f)(1)b)(ii) and (v) below*)
- Section 30-24(f)(3) [Inclusionary Units] – The proposed change, requiring that Inclusionary Units be offered for sale or rental in the same proportion of and concurrent with the market units provides an incentive to complete the on-site affordable units concurrently with the market units.
- Section 30-24(f)(8)c) and d) [Inclusionary Housing Plan and Covenants] – The proposed changes free the Newton Housing Authority from involvement with the ownership units and appropriately shifts the responsibility to the Planning Department, which has experience with ownership projects through its homebuyer and housing development programs. The Authority would continue oversight of rental unit tenant selection.
- Section 30-24(f)(8)e) [Inclusionary Housing Plan and Covenants] – The proposed changes appropriately shift the recording of affordable housing covenants to certain appropriate times which better fit the overall process.
- Section 30-24(f)(9) [Public Funding Limitation]– The proposed change allows frequently cash-strapped, non-profit housing developers access to public funds.

In addition the Planning Department suggests further refinements in the following sections:

- Section 30-24(f)(1)b(ii) – The proposed change brings the determination of affordable price into consistency with similar affordable housing programs run by the state and other localities. However, the timing of the determination, as proposed, may be problematic in two ways. First, it only addresses the determination of price for the initial sale by the developer and not subsequent resales. Second, the determination of price *at the time of application for special permit* may be a problem for developers, since it may be two years or more from application to the completion of construction. The Planning Department and Partnership suggest consideration of certain other refinements as follows:
 - ✓ Initial determination – Develop language stating that initial determination of affordable unit price, by the developer with the approval of the Planning Department, should be required prior to the start of marketing activities (as determined in the approved Inclusionary Zoning Plan).
 - ✓ Resales – Develop language stating that resale price should be determined by the City after the owner notifies the City of their intent to sell.
- Section 30-24(f)(1)b(v) – While the term “..aggregate median income..” previously adopted as part of Ordinance X-48 was not initially identified as a “clean-up” item, it is suggested that it be reviewed as to intended meaning and consistency with other income-defining language. As currently written, this term may potentially be interpreted as requiring that half the households would have to be *above 65%* of AMI (Area Median Income determined by the U.S. Department of Housing and Urban Development pertaining to the area, which includes Newton)
- Section 30-24(f)(5) [Off Site Development] – The Partnership felt strongly that the last two sentences at the end of the revised paragraph should be further revised to read:

As a condition of granting a special permit for the Applicant’s development, the Board of Aldermen shall require *that the developer’s obligations, under the development agreement with the non-profit, shall be completed no later than completion of the Applicant’s Market Rate units. If the developer’s obligations with regard to the off-site units are not completed as required within that time, temporary and final occupancy certificates shall not be granted for the number of Market Rate Units equal to the same proportion (rounded to the nearest unit) as the unfulfilled obligations to the non-profit.*

The Partnership noted that the developer has no control over the non-profit’s development process and that unforeseen delays in that process might unfairly penalize the developer. They felt that ensuring that the developer has met his obligations under the development agreement should be sufficient to protect the affordable housing. While Planning Department staff concur with the intent of this recommendation, additional clarification seems necessary to reflect the expectation

that there should be an agreement between the parties satisfactory to the City spelling out the obligations between the developer and non-profit.

- Section 30-24(f)(8)b – The proposed change is appropriate. In addition, the Planning Department suggests developing language so that the section also provides that adjustments to the standard form marketing and resident selection plan are permissible, if circumstances warrant, subject to final approval by the Planning Department.

IV SUMMARY AND RECOMMENDATIONS

The Planning Department supports the proposed language clarifications and improvements suggested by the Task Force, which will help to make this a more effective Ordinance and facilitate the creation of affordable housing. The Department believes, along with the Partnership, that in certain cases further refinements are desirable as discussed in Section III. Analysis, above. While nearly ready for adoption, it makes sense to further clarify Sections, 30-24(f)(1b)(ii) and (v), (f)(5), and (f)(8)b along the lines indicated above:

1. Following final review by the City's Law Department, adopt the proposed changes as noted in ***Attachment A- Proposed Amendments to Ordinance No. X-48 (Inclusionary Zoning)*** pertaining to the following sections:
 - Sections 30-24(f)(1)a) and b)(iii) through (v)
 - Section 30-24(f)(3)
 - Sections 30-24(f)(8)c) and d)
 - Section 30-24(f)(8)e)
 - Section 30-24(f)(9)
2. Develop/finalize refinements to language of selected provisions, with assistance of the City's Law Department, and adopt the following with suggested additional clarifications:
 - Section 30-24(f)(1b)(ii) – pertaining to timing of determination of initial sale price and resale price, as recommended by the Planning Department.
 - Section 30-24(f)(1b)(v) – pertaining to clarifying the term “..aggregate median income..” as recommended by the Planning Department
 - Section 30-24(f)(5) – pertaining to completion and occupancy of market rate and affordable units where production of off-site affordable housing units involves collaboration with another party which is a non-profit housing developer, as recommended by the Newton Housing Partnership.
 - Section 30-24(f)(8)b) – pertaining to modification and approval of the standard marketing and tenant selection plan as recommended by the Planning Department.

ATTACHMENTS

***Attachment A – Proposed Amendments to Ordinance No. X-48 (Inclusionary Zoning),
draft last revised 9/22/04***